

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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ANDRE WINGO,

Plaintiff,

v.

Case No. 10-C-463

WALTER LEMON,  
and TEDI GENTRY,

Defendants.

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**ORDER**

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On August 18, 2010, this court conducted a scheduling conference in accordance with Fed. R. Civ. P. 16 and Civil L.R. 16(a) (E.D. Wis.). The pro se plaintiff, Andre Wingo, appeared in person, and appearing by telephone on behalf of the defendants was Attorney Sheila Sullivan.

As an initial matter, this court noted an order issued by the court of appeals for this circuit on August 2, 2007, finding that the plaintiff had accumulated three strikes under the Prison Litigation Reform Act. 28 U.S.C. § 1915(g). Pursuant to this order, the clerks of all federal courts in this circuit are to return unfiled any papers submitted by or on behalf of the plaintiff until the plaintiff pays all outstanding fees and sanctions in all civil actions he has filed. The order does not apply to criminal cases or petitions challenging conditions of confinement and, according to the appeals court, may be reexamined in two years. See Wingo v. Kluck, Case No. 07-C-69 (7th Cir. August 2, 2007). To date, the plaintiff had not paid all outstanding fees and sanctions.

At the conference with the parties, the court acknowledged that the plaintiff filed his complaint in this action in state court. It was removed to federal court by the defendants. The court discussed relevant case law, including a case from the court of appeals for this circuit, holding that in such situations the clerk of court may accept papers submitted by or on behalf of the plaintiff when the papers are submitted in a purely responsive or defensive mode, where he is cast as a defendant or respondent.<sup>1</sup> See In the Matter of: Skupniewitz et. al., 73 F.3d 702, 705 (7th Cir. 1996),

The plaintiff indicated that he intended to pursue this action based only on state law and, therefore, he intended to file an amended complaint in state court. Although the court expressed reservations about whether the plaintiff could amend the complaint in state court because the case had been removed to federal court, the plaintiff believes that he can file such amended complaint. According to the plaintiff, the state case is still open. The plaintiff also indicated that he would seek reconsideration of the three-strikes order with the court of appeals for this circuit. Based on the discussions at the hearing, the court enters the following order:

**NOW, THEREFORE, IT IS HEREBY ORDERED** that:

1. The parties shall file simultaneous briefs by **September 8, 2010**, outlining their positions regarding whether the plaintiff may file

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<sup>1</sup>This court is aware that on September 17, 2009, United States District Judge J.P. Stadtmueller granted the plaintiff an exception to the order of Court of Appeals for the Seventh Circuit and permitted him to file papers in a case that arrived in this court under similar circumstances – the plaintiff had initiated the action in state court and the defendants had removed it to federal court. See Wingo v. Kluck, 2009 U.S. Dist. LEXIS 84893, \*3 (E.D. Wis. Sept. 17, 2009). Judge Stadtmueller noted that the circumstances did not fall under any explicit exceptions set forth in the appellate court's order regarding the plaintiff. Nevertheless, the court concluded that the plaintiff was not attempting to circumvent the appellate court's order since he filed the case in state court. Under the circumstances, Judge Stadtmueller stated he would make an exception for his case because the defendants chose to remove the case to federal court.

motions and other documents in this matter. The plaintiff must also apprise this court of the status of his case in state court.

2. The parties shall appear for a status conference on **October 6, 2010, at 2:30 p.m.** Attorney Sullivan is permitted to appear by telephone. If the plaintiff wishes to appear by telephone, the plaintiff is requested to notify this court's deputy clerk in writing one week prior to this conference of the telephone number at which he can be reached. Notification should be sent:

Office of the Clerk of the United States District Court  
United States Courthouse, Room 362  
517 East Wisconsin Avenue  
Milwaukee, WI 53202

Dated at Milwaukee, Wisconsin, this 26th day of August, 2010.

BY THE COURT:

s/Patricia J. Gorence  
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PATRICIA J. GORENCE  
United States Magistrate Judge